

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Terves LLC,)	
)	Case No. 1:19-cv-1611-DCN
Plaintiff,)	
)	Judge Donald C. Nugent
vs.)	
)	
Yueyang Aerospace New Materials Co.)	
Ltd. et al.)	
)	
Defendants.)	

Terves' Response to Ecometal's Motion to Clarify (ECF #59)

1. Ecometal's Supplemental Brief: Ecometal states that it “has been prepared” to file its supplemental preliminary injunction brief but “has refrained from doing so awaiting an order from the Court.” (ECF #59 at 5.) While Ecometal should have filed that brief as soon as it was already “prepared”, and could have filed it today, it did no such thing. To allow the Court to schedule the hearing as soon as possible, Terves agrees to provide Ecometal until Monday, October 5, 2020 to file the supplemental brief.

2. Swanger Supplemental Deposition: In passing in the last paragraph of its motion, Ecometal for the first time now asks for the supplemental deposition of Dr. Swanger. (*Id.*) Terves objects. Despite receiving Dr. Swanger's supplemental report nearly two months ago on August 7, 2020, Ecometal has never asked Terves for a second deposition nor has it ever previously asked the Court for his deposition. (*See e.g.*, ECF #56, Ecometal's Opp. to Mot. for Evidentiary Hearing (no mention by Ecometal of needing second deposition of Dr. Swanger).) Indeed, Terves raised this point to the Court one month ago as a reason to proceed with the hearing. (ECF #57, Terves Reply at 2 (“Ecometal has not requested a

second deposition of Dr. Swanger regarding the '740 patent, and Ecometal previously deposed him about the '653 patent and his testing of Ecometal's products (the same testing on which he bases his '740 patent opinion)."). Since Terves' September 11, 2020 reply stating this, Ecometal still did not ask for a second deposition, and did not raise it during today's status conference. Ecometal's request for the first time today of Dr. Swanger's deposition in passing in its motion is an improper delay tactic that the Court should reject.

Further, Ecometal has nothing new to depose Dr. Swanger on since the same testing Dr. Swanger performed – and which Ecometal deposed him on – is used for the '740 patent. (ECF #57 at 2.) In fact, Ecometal's own motion confirms this by stating that it has "prepared" its supplemental brief which no doubt is based on the deposition that Ecometal already took of Dr. Swanger on his testing. Ecometal will have the right to cross-examine Dr. Swanger at the hearing.

Because Ecometal is "prepared" to file its supplemental brief, never sought Dr. Swanger's supplemental deposition, and that deposition is unnecessary because his supplemental opinion is based on the prior testing for which Ecometal already deposed him, the Court should deny this improper and delay-inspired request.

3. Conclusion: Terves respectfully asks that the Court (1) to allow Ecometal to file its "prepared" supplemental brief by Monday, October 5, (2) deny Ecometal's new, unnecessary deposition request, and (3) schedule the evidentiary hearing.

Dated: September 11, 2020

Respectfully submitted,

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